IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2437 of 2007
Date of Decision: August 16, 2007

Leela Ram & ors **.....Appellants**

Versus

Sohan Lal and another **....Respondents**

Before: Hon'ble Mr. Justice R.S. Madan

Present: Mr. I.S. Saggu, Advocate for the appellant.

R.S. Madan (J)

This Regular Second Appeal has been directed against the judgment and decree dated 5.05.2007 passed by Additional District Judge, Patiala, in Civil Appeal No.204 of 30.08.2005, vide which he dismissed the appeal of the appellant maintaining the order of dismissal of the trial court.

Brief facts of the case are that plaintiff/respondent had filed a suit for permanent injunction against his brothers Leela Ram, Balag Ram and Bhaggu Ram for restraining them from interfering or taking forcible possession and from cutting the trees standing in the disputed property, shown ABCDEFG in the attached site plan, situated in village Badshahpur.

It is further stated that the disputed property is located in Lal Lakir of the village and no record is maintained by any authority. The plaintiff/respondents are in peaceful, actual and physical possession of the suit property and are residing therein. In some portion of the suit property, they have sown vegetables and on the portion ABCD, plaintiff/respondents have planted some trees. The defendant/appellants without any right or authority wanted to take forcible possession of the suit property and

wanted to cut the trees which led the plaintiff/respondents to file the suit.

Defendants who appeared, filed written statement-cum-counter claim. It was admitted that this property is situated within the Lal Lakir and on the northern side situated the houses of Leela Ram, Mangal Ram and land of Bhagu Ram. Even in the land in dispute, the site ABCD is a Mandir of Paras Ram, Tulsi Ram, where the parties used to worship. In this Mandir there is a Pipal tree along with other trees. The land in question is owned by Gajjan Singh s/o Rulia, who delivered 3½ kanals of land out of the land in dispute to Tulsi Ram, father of the parties, for Rs.4000/- on 20.06.1974. A writing to this effect was also executed in the presence of Tehal Singh, Sarpanch of village Badshahpur and Balbir Singh etc. Remaining 3½ kanals of land was taken into possession by Tulsi Ram from Gajjan Singh on 21.06.1974 for Rs.1000/- on mortgage and till date mortgage has not been redeemed. A writing to this effect was also executed in the presence of Tahal Singh and Balbir Singh. Tulsi Ram had since died. The parties have also one sister namely, Bhago Devi who is married at village Arno. This way, the parties to the suit along with Bhago Devi have 1/6th share each in the property in dispute. Plaintiffs under the garb of present suit want to deprive the defendant and their sister Bhago Devi of the suit property. Counter claim was made by the defendant to the effect that a decree for separate possession by way of partition of the land marked ABCD be passed and permanent injunction be issued restraining the plaintiffs from alienating or disposing of any part of the suit property on the ground that it is joint property.

Replication was filed, denying the averments made in the written statement and re-asserted the case as set up in the plaint. It was stated on 7.12.1983, a family partition had taken place and co-sharers are in exclusive possession of the land falling to their share. Bhagu Ram has sold his share to Mangal Ram on 22.07.1997. The house situated in village Dedha was sold by Balak Ram defendant on 10.07.1996 to Parma

Ram s/o Kaka Ram. Tulsi Ram was actual owner of the entire property, which has since been partitioned.

The parties got their matters settled on the following issues:-

(1)Whether the plaintiffs are in possession over the suit property? OPP.

(2)Whether plaintiffs are entitled to permanent injunction as prayed for? OPP.

(3)Whether suit is not maintainable in the present form? OPD.

(4)Whether plaintiffs have got no cause of action to file the present suit? OPD.

(5)Whether the land-property in dispute is joint between the parties and they along with Bhago Devi have 1/6th share in the suit property? OPD.

(6)Whether the counter claimants are entitled to separate possession by way of partition of the land mentioned in the counter claim? OPD.

(7)Whether the counter claimants are entitled to permanent injunction as prayed for? OPD.

(8)Whether the counter claim is not maintainable in the present form? OPP.

(9)Whether the defendants have got no cause of action to file the counter claim? OPP.

(10)Whether the property in suit was already been partitioned on 7.12.1983 and 20.11.1983? OPP.

(11)Relief.

Both the parties adduced evidence in support of their contentions raised in the pleadings.

Issues No.1, 2, 5, 6, 7 and 10 were taken up together and these were decided against the defendants and in favour of the

plaintiff/respondents. Issues No.3 and 4 were decided against the defendants and so were issues Nos.8 and 9. Consequently, the suit of the plaintiff/respondents was decreed and counter claim filed by the defendant/appellants was dismissed.

Aggrieved by the aforesaid judgment and decree, the defendants filed an appeal before the Court of Additional District Judge. The learned Additional District Judge after hearing the counsel for the parties as well as taking into consideration the evidence brought on the record returned the finding on all issues in favour of the plaintiff/respondents and upheld the order of the Trial Court and dismissed the appeal.

The Defendant/appellants again knocked the door of this Court by filing the present Regular Second Appeal.

It is contended on behalf of the appellant that no partition has taken place between the parties. Learned Civil Judge (Sr. Division), Samana and the First Appellate Court have erred in holding the plaintiff/respondents to be the owner of the suit property. He further stated that the defendant/appellant along with their sister are in fact the co-sharer in the suit property. Therefore, no injunction order could be passed against them. The counter claim preferred by them should have been decreed and plaintiff/respondents should have been restrained from interfering in the peaceful possession of the defendant/appellants.

On the asking of the Court as to what is the substantial question of law involved in this appeal, learned counsel for the defendant/appellant only submitted that it is a case where the documents have not been properly interpreted by the Courts below. However, the counsel was unable to point out how the two Courts below have misread the evidence and the documents produced before them.

This Court has gone through the impugned order passed by the Additional District Judge, Patiala, and is of the view that the two courts

below have rendered concurrent findings of facts on all the issues in favour of the plaintiff/respondents and against the defendant/appellants as per the evidence available on the record.

No substantial question of law is involved in this case.

In view of the embargo Section 100 clause 4 of the CPC, this appeal does not involve any substantial question of law.

No merit. Dismissed.

(R.S. Madan)
Judge

August 16, 2007
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